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## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
NO. 1984CV2931-C

Notice Sent

10/21/2020

K. M. C.

T. J. C.

E. K. K.

(S.L.)

ALI JAAFAR, MOHAMED JAAFAR,  
and YOUSEF JAAFAR

v.

MASSACHUSETTS STATE LOTTERY  
COMMISSION and MICHAEL R. SWEENEY,  
In his official capacity as Executive Director

### MEMORANDUM OF DECISION AND ORDER ON PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

Plaintiffs Ali Jaafar, Mohamed Jaafar and Yousef Jaafar ("Plaintiffs" or the "Jaafars") have brought a two-count Complaint against the Massachusetts State Lottery Commission (the "Commission") and its Executive Director. Count I of the Complaint asserts a claim for breach of contract; and Count II of the Complaint seeks a declaratory judgment, invalidating the Commission regulation pursuant to which the Jaafars were subjected to an extended delay in the prize payout of winning lottery tickets. Presented for decision are the parties' cross-motions for judgment on the pleadings. For the reasons which follow, the Plaintiffs' motion shall be **DENIED** and the Defendants' motion shall be **ALLOWED**.

## FACTUAL BACKGROUND<sup>1</sup>

The Commission is an agency of the Commonwealth, authorized by law to regulate the Massachusetts State Lottery (the "Lottery"). See G.L. c. 10, § 24. That statute invests the Commission with broad authority to manage and regulate the Lottery, including without limitation "the manner of payment of prizes to the holders of winning tickets." Id. Further to and consistent with such plenary authority, the Commission is authorized to promulgate regulations. Id.

The Commission likewise bears statutory responsibility for "carry[ing] on a continuous study and investigation" of the Lottery, in order to ascertain whether abuses or evasions of State Lottery law are occurring and "to formulate recommendations for changes in said law and the rules and regulations promulgated thereunder to prevent such abuses and evasions." Id. Among the laws governing the operations of the Lottery in this regard is G.L. c. 10, § 28A, which requires the Commission, before distributing any prize money in excess of \$600, to determine whether the holder of the winning ticket owes past-due child support or tax obligations. If so, the Commission must encumber the prize money in order to satisfy the ticket holder's unpaid liabilities, and may only pay the ticket holder such amount (if any) that remains thereafter. Id. In accordance with the objective of deterring tax and child support evasion, State Lottery law likewise bars anyone other than an authorized sales agent from selling Lottery tickets, id. at § 29, and expressly prohibits the holders of winning tickets from assigning their right to prize money except in limited, statutorily defined circumstances. Id. at § 28.

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<sup>1</sup> The facts recited herein are undisputed in every material particular, and are drawn from the parties' pleadings and the jointly filed Record Appendix. The parties agree that the case presents a pure question of law, properly decided on cross-motions for judgment on the pleadings under Mass. R. Civ. P. 12(c).

On November 21, 2017, Defendant Michael R. Sweeney (“Sweeney”), the Executive Director of the Commission, wrote a memorandum to the Commission to express his concerns regarding high-frequency cashers of winning Lottery products. Sweeney explained that “[t]he pattern of high-frequency wins defies statistical odds and reason, calling into question the legitimacy of the high-frequency activities.” Animating this concern for illegitimacy, Sweeney noted the Commission’s statutory mandate “to properly collect outstanding child support, liabilities and taxes and fees owed to the Commonwealth” under G.L. c. 10, § 28A. Sweeney specifically noted the risk that winning ticket holders might be selling their tickets, or otherwise assigning to third parties their rights to collect prize money, for the improper purpose of avoiding the financial offsets dictated by law. See ante.

In response, on November 28, 2017, the Commission authorized Sweeney to promulgate rules and regulations addressing the phenomenon of high-frequency cashers of Lottery tickets. The resulting regulation, 961 Code Mass. Reg. § 2.43(2) (the “Regulation”), provides in relevant part as follows:

“(2) High-frequency Prize Winner.

(a) The Director may conduct an internal review of a High-frequency Prize Winner, as defined in 961 CMR 2.03, to determine if the submission of at least 20 claims for Lottery prizes, each with a value of at least \$1,000.00, within any period of 365 days, is factually or statistically improbable. If the Director makes such a determination of factual or statistical improbability, the Director may impose a prize claim suspension, as provided in 961 CMR 2.43(2)(b).

(b) Penalties. The Director may impose a prize claim suspension, as follows:

1. First Violation. A High-frequency Prize Winner shall be suspended from claiming lottery prizes, with a value of \$600 or more, for a period not to exceed 90 days.

2. Second Violation. A High-frequency Prize Winner shall be suspended from claiming lottery prizes, with a value of \$600 or more, for a period not to exceed 180 days.

3. Third Violation. A High-frequency Prize Winner shall be suspended from claiming lottery prizes, with a value of \$600 or more, for a period not to exceed 365 days.

(c) Hearings on Prize Claim Suspensions. A High-frequency Prize Winner shall be entitled to a hearing before any prize claim suspension goes into effect, provided that the hearing request is in writing and received by the Director before the 21<sup>st</sup> calendar day from the date, which appears on the suspension notice.

The hearing shall be conducted by the Director or their designee. If the High-frequency Prize Winner is aggrieved by the decision of the Director, they may appeal to the Commission for a hearing pursuant to M.G.L. c. 30A. Any such appeal shall be in writing and made within 30 days of the Director's level decision.

961 Code. Mass. Reg. § 2.43(2). The Regulation defines a "High-frequency Prize Winner" as "a person ... who submits at least 20 claims for Lottery prizes, each with a value of at least \$1,000.00, within any period of 365 days." *Id.* at § 2.03. The Regulation became effective on July 27, 2018.

Between July 27, 2018 and January 27, 2019, each Plaintiff submitted 20 or more Lottery prize claims with a value of at least \$1,000.00.<sup>2</sup> Upon review of these claims, the Commission's Compliance Department determined that they were factually or statistically improbable. By letters dated April 1, 2019, the Plaintiffs were notified that the Commission was imposing 90-day Lottery prize claim suspensions upon them, and that they were entitled to a hearing before these suspensions took effect.

At the Plaintiffs' request, a hearing on the suspensions was held on May 7, 2019. On July 8, 2019, a hearing officer affirmed the Commission's 90-day prize claim suspension for each of the Plaintiffs. In the case of Ali Jaafar, the hearing officer found that Mr. Jaafar had claimed 651

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<sup>2</sup> Combined, and inside of one year, the three Plaintiffs submitted 1,337 winning Lottery tickets, with an aggregate prize value of \$1,973,346.75.

prizes valued in excess of \$1000.00 during a six-month review period. The cumulative value of these prizes was \$1,024,905.50. Based on statistical evidence presented in spreadsheet form by the Commission regarding the 559 winning instant game or “scratch” tickets Mr. Jaafar submitted for payout,<sup>3</sup> the hearing officer found that Mr. Jaafar would have been required to purchase 2,283,649 such tickets during the review period in order to win 559 times. This would have cost him \$15,455,688.99, and yielded game winnings of just \$12,158,950.76. Moreover, to have purchased this volume of instant game tickets during the six-month review period, Mr. Jaafar would have had to purchase 12,411 tickets per day (each and every day), which equates to purchasing 517 tickets per hour and more than 8 tickets per minute. Finally, the hearing officer found that Mr. Jaafar’s winning tickets were purchased in towns throughout Massachusetts, “from Lowell to Nantucket, and Boston to Worcester.” Taking all of these facts into consideration, the hearing officer found that Ali Jaafar’s winning Lottery ticket claims were “factually or statistically improbable,” and accordingly affirmed the 90-day suspension of his prize payouts.

The hearing officer made similar findings with respect to the Lottery claims history of Mohamed Jaafar and Yousef Jaafar. Mohamed Jaafar had claimed 391 prizes worth more than \$1000.00 during the six-month review period, for a cumulative value of \$532,222.25. These prizes included 321 instant game or “scratch” tickets. The hearing officer found that, to procure this number of winning tickets based on the prevailing odds, Mr. Jaafar would have to have purchased 1,163,793 tickets during the review period – 6,325 per day, 264 per hour, and more than 4 per minute. Had he done this, Mr. Jaafar would have expended \$8,431,249 and collected

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<sup>3</sup> Instant game tickets lend themselves to easier statistical analysis, because these tickets have specifically defined (and published) odds of winning.

just \$6,643,944 in winnings. The hearing officer once again observed that Mr. Jaafar's winning tickets had been purchased across a broad geographic area ranging from "Lowell to Nantucket, and Boston to Acton." On this basis, the hearing officer once again found that Mohamed Jaafar's winning Lottery ticket claims were "factually or statistically improbable," and accordingly affirmed the 90-day suspension of his prize payouts.

In the case of Yousef Jaafar, the hearing officer found that Mr. Jaafar had submitted 295 winning Lottery tickets worth \$1000.00 or more during the six-month review period, for a cumulative value of \$416,219. These prizes included 247 instant game or "scratch" tickets. The hearing officer determined that, to win \$1000.00 or more on 247 instant game tickets, at the prevailing odds, Mr. Jaafar would have had to purchase 758,815 such tickets – 4,124 per day, 172 per hour, and nearly 3 per minute. Had he done so, he would have expended \$6,150,051 and recovered just \$4,859,933 in prize winnings. Once again noting that Yousef Jaafar's winning tickets were purchased in a geographic area that ranged from "Lawrence to Harwich and Boston to Milford," the hearing officer found that Mr. Jaafar's winning Lottery ticket claims were "factually or statistically improbable," and accordingly affirmed the 90-day suspension of his prize payouts.

The Plaintiffs requested an appeal of the hearing officer's decision pursuant to G.L. c. 30A and 961 Code Mass. Regs. § 2.43(2)(c), but never followed through to schedule a hearing with respect to the same. Instead, on September 17, 2019, the Plaintiffs filed the present action in this Court. In their suit, the Jaafars allege that the Defendants breached a contract by suspending the Plaintiffs' right to cash winning tickets (Count I), and seek a declaration from the Court that the Commission exceeded its statutory authority in promulgating the Regulation (Count II).

## DISCUSSION

The gravamen of the Plaintiffs' legal action is the contention that, in imposing a 90-day suspension on the payout of their prize money per the terms of the Regulation, the Defendants breached a contract embodied in their ticket purchases and exceeded the Commission's regulatory authority under State Lottery law. Neither claim posits that the Defendants somehow misapplied the Regulation, or that the factual findings of the hearing officer were unsupported by the evidence. The statistical improbability of the Jaafars' Lottery winnings, without improper ticket transfers, is incontrovertible. Rather, the Plaintiffs' claim in both counts of the Complaint rests upon the singular charge that the Regulation itself represents an unlawful usurpation of the lawmaking power of the Legislature. The Court does not agree.

In contesting the lawfulness of a regulation, a plaintiff has the "formidable" burden of demonstrating its illegality. Student No. 9 v. Board of Education, 440 Mass. 752, 762 (2004). An administrative agency "has considerable leeway in interpreting a statute it is charged with enforcing, and regulations adopted by the agency stand on the same footing as statutes, with reasonable presumptions to be made in favor of their validity." Id. at 762-63. "A court will not declare a regulation void unless its provisions cannot, in any appropriate way, be interpreted in harmony with the legislative mandate." Id. at 763. Accord Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 255 (2006); Thomas v. Commissioner of Division of Med. Assistance, 425 Mass. 738, 746 (1997).

General Laws c. 10, § 24 invests the Commission with broad authority to operate the State Lottery and to promulgate such regulations "as it deems necessary or desirable." Included within that authority is the power to "carry on a continuous study and investigation" of the Lottery, to determine whether abuses or evasions of State Lottery law are occurring, and to

“formulate recommendations for changes in said law and the rules and regulations promulgated thereunder to prevent such abuses and evasions.” Id.

The Regulation at issue here is plainly consistent with the authority granted to the Commission under G.L. c. 10, § 24. It was precipitated by the Commission’s declared concern that prize claimants who cashed winning tickets at statistically improbable rates and in factually implausible ways may have obtained their tickets from someone else. This would at once reflect violations of restrictions against the assignment of winning tickets and against the sale of Lottery tickets by non-Lottery agents, see G.L. c. 10, §§ 28, 29,<sup>4</sup> and at the same time frustrate the Commission’s duty to satisfy a winner’s past-due child support and tax obligations before disbursing prize money to the ticket holder. See G.L. c. 10, § 28A. By imposing suspensions on high-frequency prize claimants who cashed winning tickets at improbable rates, or in implausible ways, the Commission has unobjectionably sought to discourage laundering schemes designed to thwart the apprehension of tax evaders and child support scofflaws. The Regulation thus fulfills an explicitly stated statutory concern. See id.

The Regulation is likewise consistent with the Commission’s statutory authority to determine “the manner of payment of prizes to the holders of winning tickets or shares.” G.L. c. 10, § 24. That authority quite reasonably includes the Commission’s right to suspend payouts for up to one year, where the winnings are determined (after notice and hearing) to be so factually or statistically improbable as to suggest illegitimacy. The Plaintiffs’ unsupported assertion that the

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<sup>4</sup> The Court rejects the suggestion made by defense counsel at oral argument that the statute does not strictly prohibit the assignment of winning tickets *per se*, because they are considered bearer paper, but instead proscribes assignment of the “right to payment of any prize drawn.” Presentation of a winning ticket, however, confers upon the holder a right to payment of the prize drawn, thus rendering the two the same thing for purposes of the statute’s prohibition against assignment.



Regulation represents an exercise of lawmaking power by the Commission that exceeds (and cannot be harmonized with) its statutory mandate is manifestly untrue.

In their motion papers, Plaintiffs advance three substantive arguments to challenge the validity of the Commission's Regulation. None persuade. First, the Jaafars maintain that, once the Commission identified a potential gap in the Lottery statute allowing for potential abuse of the law by would-be tax and child support evaders, its *only* recourse was to report the matter to the Governor and Legislature with recommendations for statutory reform. But the Lottery law says no such thing. To the contrary, G.L. c. 10, § 24 endows the Commission with broad authority to promulgate regulations across an expansive range of subjects related to the Lottery, including without limitation "the manner of payment of prizes." Read together with the Commission's statutory mandate to determine whether abuses or evasions of State Lottery law are occurring, a regulation specifically designed to prevent the circumvention of G.L. c. 10, § 28A's dictate that prize money first be used to satisfy any outstanding tax and child support obligations of claimants<sup>5</sup> cannot be regarded as beyond the purview of the law.

It is true, of course, that the Lottery statute additionally directs the Commission to "report immediately to the governor and the general court" matters which "require immediate changes in the laws of the commonwealth in order to prevent abuses and evasions of the lottery law or rules and regulations promulgated thereunder or to rectify undesirable conditions in connection with the administration or operation of the state lottery." G.L. c. 10, § 24. But nowhere does this provision of the law state or even imply that such reportage is to the exclusion of the Commission's authority to address the underlying problem by regulation. Cf. Tze-Kit Mui

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<sup>5</sup> By identifying potential third-party straws who might have been enlisted to stand in for these obligors, thereby concealing the legal liability.

v. Mass. Port Auth., 478 Mass. 710, 712 (2018) (“[O]rdinarily [courts] will not add language to a statute where the Legislature itself has not done so.”). After all, a regulation might be strengthened by a legislative amendment to the statute investing the Commission with the power to do *more* than what it proposes to do. In the present case, for example, the prize money suspension permitted by the Regulation does no more than afford the Commission (or law enforcement) a period of time in which to investigate potential tax and child support evasion schemes facilitated through misuse of the Lottery via third parties. By directing the Commission to make report to lawmakers in the executive and legislative branches, however, § 24 primes the pump for more robust statutory reforms exceeding the existing power of the Commission to impose by regulation. These reforms might include the imposition of criminal penalties, or the dictate that laundered prize payouts be forfeited altogether rather than merely deferred. In short, nothing in the text or logic of the Lottery statute supports the Plaintiffs’ contention that the Commission, faced with what it perceived to be recurring misconduct carried out in the service of thwarting other explicit provisions of the law, was somehow limited in its response to bringing the matter to the attention of the Governor or Legislature.

Second, the Plaintiffs argue that the Regulation exceeds the authority of the Commission, because the imposition in *this* case of its delayed prize payouts punishes persons not in fact shown to have assisted tax delinquency or child support evasion. This argument need not long detain the Court. The express purpose of the Regulation when enacted was to identify for investigation those whom circumstances suggested *might* be misusing the Lottery to avoid tax or child support obligations. The validity of the Regulation, however, hardly depends upon demonstrating that 100% of those persons made subject to its payout deferral are, in fact, law-breakers. Massachusetts transportation officials are authorized to post speed limits on public

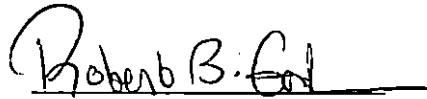
ways, the purpose of which is to promote safe driving and thereby minimize traffic accidents and fatalities. Those who drive at rates of speed exceeding such posted limits will be subject to tickets and fines, and cannot avoid the same by arguing that they did not in fact cause an accident or fatality.

Finally, the Plaintiffs assert, with no small amount of cheek, that allowing the Commission to delay or deny prizes to persons based on the statistical improbability of their winning them would allow the Commission to deprive even legitimate Lottery winners of their due. After all, the Jaafars point out, the odds of winning the Mega Millions Grand Prize are 1:302,575,350, see 961 Code Mass. Regs. § 2.59(7); and such improbability would not justify suspending the winner's payout. No sale. It is certainly true that the odds of winning a state-wide Lottery are quite low, a fact that accounts for it providing a consistent source of revenue to the Commonwealth's cities and towns. But the odds of a single individual winning *one* Lottery prize, long though they are, cannot remotely be compared to the improbability of that same individual winning *hundreds* of Lottery prizes within a six-month window. Expressing the difference statistically would require logarithmic mathematics far exceeding the capacities of the undersigned. Stated simply, however, a person winning the Lottery, though improbable as a factual matter, can and does occur with some regularity (and without process fraud). That same individual winning hundreds of Lotteries during a brief period of time, by contrast, does not. The Regulation clearly recognizes the difference, as did the hearing officer who applied it in this case.

### **CONCLUSION**

For all the foregoing reasons, the Plaintiffs' Motion for Judgment on the Pleadings is **DENIED**. The Defendants' Cross-Motion for Judgment on the Pleadings is **ALLOWED**.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read "Robert B. Gordon", written over a horizontal line.

Robert B. Gordon  
Justice of the Superior Court

Dated: October 12, 2020